

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 302 of 1994

TO

CIVIL REVISION APPLICATION No 305 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LAXMANBHAI VITHALBHAI

Versus

KK MAURYA

Appearance:

MR AKSHAY H MEHTA for Petitioner
MR SUNIL B PARIKH for Respondent No. 2
MR DARSHAN M PARIKH for Respondent No. 5
MR LR PUJARI for Respondent No. 6

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/11/98

ORAL JUDGEMENT

#. As a common question of facts and law has arisen in all these civil revision applications, the same are being

taken up for hearing together and are being disposed of by this common order.

#. The claimants-applicants filed the motor accident claims petition before the Motor Accident Claims Tribunal, Bharuch, for grant of compensation to them as a result of injury sustained in a motor vehicle accident. The claimants have not paid requisite court fees in the claim application. They made a request to the tribunal to permit them to file claim petition as indigent persons. This application came to be rejected under the impugned order of the tribunal. The tribunal has given direction to the claimant-petitioners to pay the court fees on the application within ten days of the order. Hence these civil revision applications before this Court.

#. From the order of this court in these civil revision applications, I find that this Court has granted time to the claimants-petitioners to pay the court fees and time of paying court fees has been extended from time to time. However, the learned counsel for the petitioner is not in a position to make a statement, more precisely, an affirmative statement whether on the claim petitions the court fees have been paid by the claimants-petitioners or not. Be that as it may, I fail to see any justification in the order passed by the learned tribunal. Even if it is taken that the petitioners have income of Rs.2,000/= p.m. still it is very difficult for them to pay the court fees in some of the cases if it is more than Rs.2,000/=. If whole of the income of one month is utilized for payment of court fees then certainly it will be very difficult for the claimants-petitioners to meet out the expenses of that month and starvation will be there in the family. The provisions of Order 33, Civil Procedure Code, 1908, have to be given a broad, practical, real and objective approach. We are in the era where we talk of providing legal aid free of cost to needy persons and I have seen that a person who has income of Rs.2,000/= p.m. is taken to be in the category of persons entitled for free legal aid irrespective of the fact whether the person to whom free legal aid has been provided by the Authority, is not required to be paid the amount back to the authority. In the matter where the litigants come before the Court and pray for permitting them to file claim application as indigent persons, we are only deferring payment of court fees. Irrespective of the result of the case finally, the liability of payment of court fees still continues. So it is a case where temporary relief is granted to such litigants where they state that they are not in a

position to bear out expenses of litigation. Such prayers in ordinary course are to be accepted. By having income of Rs.2,000/= or more still it is very difficult to accept that the litigant will be in a position to bear out expenses of litigation which heavily costs in these days. When we are talking of providing free legal aid how far it is justified for the courts to deny enforcement of civil rights for the litigants who are not in a position to make payment of court fees only on the ground that he is not an indigent person. While deciding application filed by a litigant for grant of permission to take the litigation as indigent person, the court should not go by his income but by the fact as to within what available sources it is possible for him to make payment of court fees, the professional fees to be paid to advocate and other incidental expenses. Where the court is satisfied that from the available resources it is difficult for the litigant to furnish court fees, professional fees and other expenses of litigation, it has to rightly accept the application of a litigant to permit him to file suit or other proceedings as indigent person. In this case a conservative approach has been taken by the learned tribunal as it declined to permit the applicants to file claim applications as indigent persons. In such matters mere word of a litigant is sufficient for the obvious reason that he is not being provided free legal aid but only a deferment of payment of court fees.

#. In such matters, the State Government is the only necessary and proper party. Rest of the other opponent are not necessary or proper parties. So even if one of the respondents is not served, it will not come in the way of this court to decide these civil revision applications on merits without waiting for receipt of summons. In such matters, the courts should take a broad view as well as a view which will subserve the purpose of providing social and economic justice to the hard pressed litigants.

#. In the result, these civil revision applications are allowed and the order of the court below is set aside in all these civil revision applications. The claimants-applicants are permitted to file their claim petitions as indigent persons. However, in case, the claimants-applicants have already paid the court fees, this order need not be complied with. Further, this order will not give any opportunity to them to make application for withdrawal of the amount of court fees. It is further directed to the concerned Motor Accident Claims Tribunal to decide the petitions out of which

these civil revision applications have arisen within a period of six months from the date of receipt of writ of this order. These civil revision applications and Rule stand disposed of in aforesaid terms with no order as to costs.

(S.K.Keshote, J.)

[sunil]